

RESERVES (WANJARRI NATURE RESERVE) BILL 2011

Second Reading

Resumed from 22 March.

HON SALLY TALBOT (South West) [2.06 pm]: The Reserves (Wanjarri Nature Reserve) Bill 2011 essentially provides for a land swap. It will allow 758 hectares of land in the Wanjarri class A Nature Reserve to be swapped for a much greater area, 8 431 hectares, in the Yakabindie pastoral lease. Nearly 8 500 hectares will come out of that pastoral lease and be vested in the Department of Environment and Conservation in exchange for 758 hectares in the class A reserve. The second reading speech makes it clear that the purpose that has given rise to this land swap is that 758 hectares are needed for the disseminated nickel sulphide project, which of course is part of the BHP Billiton Ltd Yakabindie mine.

At this point, I should thank the government relations people from BHP for the several briefings that they provided to me and my colleagues over the couple of years that this bill has been in the offing and also of course the minister's officers who briefed the opposition quite extensively on the implications of this bill. It was much appreciated and very helpful.

It is interesting to see that BHP does not want to mine these 758 hectares. Often when we are faced with this kind of proposal, it is because some resource has been identified that is contiguous with the boundary of the land that is being excised. In this case, however, BHP wants to use it as a waste dump. That raised a few eyebrows, at least on my part, at the beginning of the process. But having spoken to BHP about exactly what its intentions are, I can see that there is some validity to its argument that this is the best way to proceed. Interestingly, this is such a widely discrepant area that is proposed to be swapped. In the case of the disallowance motion we were debating earlier today, we were talking about an environmental offset that was, I think, only a couple of hectares. In this case we are talking about a very large area coming into the national park reserve system in exchange for a relatively small area. I was very gratified to learn, and the department was very thorough in providing the evidence to back up the point it was making, that we have some areas of very high conservation value coming into the national estate with this land swap; that is very much to be welcomed and celebrated. However, I do not want to give the government the impression that it is all chocolate and roses, because there are a couple of problematic aspects of the bill we are considering this afternoon that I think need further examination. I will raise them now and listen very carefully to the parliamentary secretary's response in her summary of the second reading debate, but I think they are probably more appropriately teased out in the committee stage. The two concerns I have, not surprisingly to anyone who is familiar with the content of the bill, concern the environmental aspects, and aspects that relate to native title and concerns that have been raised by the local Indigenous community.

Let us take the environmental concerns first. It is very important in looking at this kind of land swap that front and centre of our consideration are the conservation values; in other words, the equivalent net gain and loss between the area we are losing and the area we are gaining. I have already referred to the fact that the area we are gaining is not only very large, but also has been extensively surveyed, and demonstrably contains a wealth of conservation values in its own right. It is also worth noting at this stage that BHP Billiton has been running the Yakabindie pastoral lease specifically with this land swap in mind for a number of years. Therefore, the land is not degraded, as a lot of pastoral lease holdings are, by historical practices of grazing and all of the things honourable members will be well familiar with. The environmental values of this land have actually been protected and that makes this proposition, at least superficially, look quite attractive. However, two problems arise. The first is that I am not convinced that the government is applying the right degree of rigour to work out exactly what our objective should be when we look at this kind of land swap, because the point is not that there is a net asset gain in environmental values; it is that the precise quantity of conservation value be kept running along at roughly the same levels. Therefore, is not a matter of saying we have swapped this bucket of valuable things for a bucket that is of equal capacity; we actually have to look at what the contents of that bucket consist of. Therefore, it is very important that we look at land types for this kind of arrangement of swapping one area with high conservation values with another.

It has been well documented in the debate about this bill in the other place and in some of the commentary that has gone on in the briefings that we are running the risk of diminishing some of those critically important land types when we do this kind of land swap. Therefore, there is, perhaps I can put it this way, an international expectation and standard that 15 per cent should be a ballpark figure when looking at land types that are being diminished because of land-use activities. Therefore, a representation of about 15 per cent of the land type is needed. If it falls below 15 per cent, alarm bells should start ringing. I am not an expert in these areas of science that relate to biodiversity and conservation of threatened land types, but it is my understanding that in the case of this area around the Wanjarri class A Nature Reserve, we are approaching that real red light—ringing danger zone with some of the land types that remain. This is the sort of thing we can go into more detail about when we get to

the committee stage, but I think the parliamentary secretary will be familiar with the arguments to which I refer, and I would like to hear her address that point. When talking about the whole issue of environmental offsets, we must consider not only the quantities of land, but also factor in the quality and diversity of the land. This is the basic principle that frames our discussion about land swaps, their ecosystems and the protection of biodiversity. I sometimes feel that biodiversity is intrinsically missing in the government's rhetoric about things like offsets and land swaps. A particular part of an ecosystem cannot be run down too low before the entire system starts to falter. Therefore, I think in this particular instance we are looking at now—which, as I said, is a relatively small area being excised and a large area going into the class A reserve—there are some quite substantive problems about the diminishing land types that will be protected in that region.

I turn now to the concerns that have been expressed by the traditional owners in this region. We are talking here about the Tjiwarl traditional owners and the Tjiwarl native title claim. The applicants on this claim are Keith Narrier, Judy Ashwin, Shirley Wonyabong, Edwin Beaman, Kado Muir, James Calyun and Charmaine Tullock. This native title claim was filed on 17 June 2011. When this bill first crossed my desk, which was a few days after it was introduced into the other place, I made contact with the representative bodies in the central desert area and asked them to look at the bill and give me a summary of their reactions. That process was then taken over by my colleague in the other place, Ben Wyatt, when he became the native title spokesperson for WA Labor, and we received some advice back. Of some concern is the fact that substantially the same advice was conveyed by letter to the Minister for Lands, Hon Brendon Grylls. I am certainly not aware at this point that there has been a response to that letter. The parliamentary secretary may be able to enlighten me when she makes her response to the second reading debate later. I will read the substance of the response from the Central Desert Native Title Service, which states —

The area described as being excised in the Bill ... and the area referred to in the second reading speech as the 'inclusion area' ... is within the area of the Tjiwarl native title claim (WAD 228/11). The Tjiwarl claim was filed on the 17 June 2011 and registered on the 13 January 2012.

I note that is after the bill was already going through the processes of Parliament. It continues —

Central Desert Native Title Services acts for the Tjiwarl native title claimants.

The response went on to state —

We are unaware of any consultation by the Government with our clients either as individuals or in their capacity as native title claimants regarding the Bill, the excision area, or the inclusion area. The excision area and the inclusion area, will almost certainly impact upon our clients registered native title rights and interests. The Tjiwarl native title claimants have an interest in that land and should be consulted.

It goes on to point out that if there is a failure to comply with the future provisions of the commonwealth Native Title Act, that —

... may result in the Bill or future acts referred to in the second reading speech being partially or wholly invalid.

A request was then made to me and to the shadow minister in the other place, Ben Wyatt, that the government should delay passage of the bill to enable the appropriate consultation with the registered native title claimants.

This of course is not the first time this situation has arisen. At the government-provided briefing it was said that all these things have been signed off and agreed to, but when we actually go out and talk to the other stakeholders we find that that is not the case. I well recall, as I am sure other members of this house will, when we were debating the Conservation Legislation Amendment Bill, we successfully petitioned the minister, who, at that stage I think was the Minister for Environment, to have the bill deferred for a month so that negotiations with the representative bodies around the state could take place. I am a bit troubled that the same situation seems to have arisen in relation to this bill. I was first briefed by BHP Billiton; I cannot remember exactly when, but it was certainly 12 months ago, if not more. The government has certainly known that this bill was in the offing for many, many months. To get to this stage of the bodies representing the traditional owners telling us that those negotiations have not taken place when there is a native title claim already on file with the courts is a bit of a worry. I hope the parliamentary secretary will address that point in her summary of the second reading debate.

I said that Labor would be supporting the bill. It is important to put on record the fact that this is not just about finding a place for BHP to put its waste from this mining operation. This is actually about the expansion and continued operation of the Yakabindie project at Mt Keith. It also has flow-on effects for a great deal of industrial development in that region including the Kalgoorlie nickel smelter and the Kwinana nickel refinery operations, and the flow-on that the state receives in terms of, importantly, job creation and employment, and, as importantly, state royalties. It is incumbent on members of this house to progress this matter without too much

delay because there is a great deal at stake here in getting this bill passed. Those matters that I have raised are of some concern.

I thought those concerns would be addressed by going back to the second reading speech but, oddly, I find that the second reading speech is peppered with the kind of language that suggests a lot of elements of this bill are far from locked down. There are two sums of money mentioned in this bill. The first is \$500 000, which will be paid at a certain stage of the proceedings. The second sum is \$2 million, to be set aside until later in the process. The language surrounding that arrangement is all couched in terms of “possibility”, not of certainty. It is far from clear to me and other members on this side of the house why we should allow that vagueness to remain in this bill. I am sure Hon Wendy Duncan will make this point in trying to reassure me that we are dealing with two separate issues here. It is not the province of this bill to deal with the native title claim; nevertheless, the claim is now well and truly in process. It is not that we are foreshadowing the possibility of a claim down the track. This claim is now a reality. I would have thought that we should be talking with far more certainty about when these amounts of money will be paid and exactly what they have been set aside to cover; that is, what precise contingencies they would address. After all, native title is a process that is now well understood in this state. It is not as if we are breaking new ground with this. There must be a sense in which we can give more assurance to the traditional owners about exactly how the land swap will progress and how, in the sense of future acts and the operation of the Native Title Act, this will play out for the traditional owners in that area.

I will be true to my word and take up remaining points as we move into committee. I will finish my comments there by noting that Labor will support this bill.

HON ROBIN CHAPPLE (Mining and Pastoral) [2.27 pm]: The Greens (WA) will be supporting the Reserves (Wanjarri Nature Reserve) Bill 2011, but we propose to move an amendment to it. I will talk shortly about why we propose to move an amendment. It is not dissimilar to the concerns that Hon Sally Talbot has already mentioned.

I was very privileged to spend three days in this area from Thursday, 23 February 2012, through to and including Saturday, 25 February. We looked over the various areas that were to be excised from the Wanjarri Nature Reserve and indeed the areas to be added. We also had a look at some of the other issues. As part of that process we were accompanied by the traditional owners. I want to deal with the site issues—what is to be excised and what is to be added; the heritage values contained within both sites—the mulga ant dreaming sites and the mulga ant hole; and the ecological values of both sites. I want to touch on the issues of Dingo Pool, sandalwood, future act provisions and, latterly, the reason we are doing this. Those members who have been around for a long time will remember that Noonkanbah, Yakabindie and Jones Creek were going on at exactly the same time. There are parallels between those two issues.

I will refer to the land swap. The Reserves (Wanjarri Nature Reserve) Bill is actually not about a land swap; it is about an excision. There is nothing in the bill that actually talks about a land swap. A land swap is mentioned in the explanatory memorandum and in the ministerial statement. We propose an amendment to formalise the land swap contained in the bill. I also should take this time to thank a number of people we met during our review of what has been happening. We met with BHP Nickel West. I want to thank Chris Stone and Ken Weston, both of BHP. We latterly met with employees of the Department of Regional Development and Lands. Again, we had a really good briefing from officers of the Department of Regional Development and Lands, and the Department of Environment and Conservation. We gleaned a lot of information from those meetings and we consider them to have been very, very valuable meetings with people who had a good handle on what was going on.

The land swap, as Hon Sally Talbot has said, is for a triangular piece of land that covers the BHP Billiton–Nickel West Pty Ltd and BHP Billiton–Yakabindie Nickel Pty Ltd leases, and also covers the area of an exploration lease. As has already been identified, this is to facilitate the development of the Yakabindie mine. Of that triangular block, we are looking at the bottom corner for waste stockpiling.

It is really rather interesting; when one goes back to “Wanjarri Nature Reserve: management plan 1996–2006”, and looks at what was originally proposed, there was a triangle—the same triangle we are talking about here—to be excised, and an area just below it, of comparable size, that was to be added. BHP now wants to use that comparable triangle of land for further lay-down areas, and has come up with the idea of adding the area around Hannans Bore, the top half of Yakabindie station, and the breakaway country into the area.

The area to be excised is described as relatively high mulga country that has a laterite surface, is fairly sparsely vegetated and has obviously had, at some stage, cattle running through it. We have to remember that, prior to this area becoming the Wanjarri Nature Reserve, cattle were indeed running in the area. There are breakaway areas to the east and in BHP Billiton’s proposed mine area to the west.

From a heritage perspective, there were artefact scatters across the land; these were tool implements and those sorts of things, but we have to remember that the area was originally fairly well traversed anyway. Both in this

area and the area to be added, there are artefact scatters. What is interesting about the area to be excised is that it is the mulga dreaming trail. Just outside the area to be excised, to the west, is a large hole through the breakaway escarpment, which is where the dreaming of the mulga ants coming out of the ground into that area extends from. The land therefore has some heritage and anthropological values, although there is little evidence of archaeological value.

I found the area to be added to be quite stunning country. There are significant breakaways and a large number of caves, all showing evidence of habitation. In fact, we came across four stick-nest rat nests, which is quite a large number to find in any one location. They were all in good preserved order. For those who do not know, the stick-nest rat is theoretically extinct; there have been stories of sightings in the 1990s. They were large marsupial rats that built their nests out of sticks and stones and used their own excreta as a glue to make the nest. The nests still remain and they are rather fantastic systems. There are a large number of them in the new area.

There are also some granitic domes in the new area, which are all heavily carved. We were very privileged to be there just after the rains, and we were able to see how the water was running out of these granite domes into the surrounding country. We could follow the carvings that reflected the water movement. I would think that there is some value in turning the area that is to be added into an Indigenous protected zone, because there is quite clearly a heavy level of historic archaeological and anthropological value there. There is a most incredible pool at the top of one of the breakaways that exists all year round, and it was a known gathering place of some significance.

In respect of the land swap, from a heritage perspective, I do not think we can make an argument that one is better than the other, because they have different levels of heritage value. But from a flora and fauna perspective, I would suggest that this area, even though it is larger, is significantly more diverse and more representative of both the land that is to be excised, and the broader suite of landforms in that area.

One of the things I found interesting is that the area to be added has a large number of creek lines coming down from the breakaway. These all meander across the area to the south west corner. Just outside the south west corner, in the Yakabindie pastoral lease, is Dingo Pool, which also has heritage and environmental value. I am really quite surprised, looking at the area as a whole, that Dingo Pool was not added into that reserve, because it created a synergy, it was all the same system, and I would have thought there were values in that.

It is not specified in the legislation what is to be added, other than the plan that appears in the explanatory memorandum, which makes mention of deposited plan areas as being the areas to be added; they are notional additions. I would appeal to BHP, having been out there, that it considers adding a little more to the south west corner, to provide synergy to the land.

I mentioned to officers of the Department of Environment and Conservation that, although the land swap has not taken place and may never take place because of future legislative provisions, it was really quite adventurous of the Department of Environment and Conservation to have already gone out and fenced the land. When we got there, there was a sign for the Wanjarri Nature Reserve and it was all fenced. We all had a bit of a chuckle at the meeting about the paint still being wet on the sign while the land is yet to be formally added. It may be a good thing, because the fence and the signs provide the community with notional evidence that in a more broad sense the area is protected, although I will point out that the fence and the sign have no legal value at this time.

I have touched on the issue of Dingo Pool.

The area to be excised extends from the northern end of what I call the triangle down the breakaways to the east and west, and there is certainly evidence of significant sandalwood stands in the area. I would like to know the processes the current owner, DEC, has in place to ensure that the sandalwood is harvested prior to BHP Billiton taking the lease or, indeed, what will happen to ensure it is harvested as required by the department's act. I need to know a bit more about that. Perhaps we will touch on it during Committee of the Whole.

I have never been to that particular part of the Wanjarri Nature Reserve or the area to be added, but historically I have spent quite a bit of time further to the west, albeit not very much further to the west, in the area of Jones Creek. We must remember that this legislation facilitates the Yakabindie nickel project, which has been around for a very long time and people have tried to get it up on a number of occasions. I have copies of the environmental approval processes from 1990 and from 1995. For many years, inhibiting the mining of the Jones Creek area was the focus of significant effort by the Ngalia people for reasons of environmental and spiritual significance. Recently I gave the eulogy for an old woman from the area who had passed away. For many years, she was one of the most significant fighters for the preservation of the Yakabindie area. I am still not at liberty to use her name so I will call her Palu. I am about to have some problems talking to the ethnographic material that I have before me because although I have been given permission to talk to it, they are closed records. Some are men's records and some are female records; and I will not delve into the issue. I really want to highlight some of the values espoused by the Ngalia and other people in the area for many, many years.

In 1991 approximately 20 men and women, in conjunction with P. Moore and J. Pope and the centre for prehistory at the University of Western Australia, visited the area of the then proposed Dominion mining project. They conducted two surveys of the Yakabindie and more particularly the Jones Creek area from 22 to 24 February and then again from 11 to 16 March. Jones Creek is at the centre of the proposed Yakabindie mine and I will talk some more on that in due course. However, Dominion agreed to mine for nickel underground and not disturb the surface. There was provision for what I call a win-win. I understand that BHP want to mine open cut in the area and I have particular concerns about that. The area is subject to a carpet snake dreaming—Iltji—and the story of Tjinkuna, the dragonfly. Many years ago, I was very privileged to be one of the few men to visit, with Palu, some of the periphery of the women's sites in the area. They are stone arrangements of significance, as are the men's areas, which exist in many of the caves and the breakaways. The area is also very important for the bush medicine mulka kutjal, which is a bush common to the country. For many years, the Ngalia have looked, with some American corporations, to licence this bush as a traditional source of medicine. Many surveys were conducted in the area and another significant ethnographic report of the Bar Smith and Violet Ranges that surround Yakabindie deals with songlines and sites in the area. These reports contain extensive site lists covering the area. Although we are dealing with a land swap in an adjacent area, with which we and, I am advised, the Ngalia, do not have a problem, it is part and parcel of a proposal that will facilitate the destruction of significant heritage areas that have, for a very long time, been fought for and that, up until the old woman, Palu, passed away, had not progressed. It is very interesting that after the last strong woman in the area eventually passes away, mining is again on the agenda.

It is important now to talk about the area's environmental value. The Wanjarri Nature Reserve was established in 1971 on what was originally a vacant pastoral lease. The 53 248-hectare station had previously carried sheep. Over the past 30 or 40 years the land has mostly regenerated into a system that is now quite valuable, although when it was originally added, the evidence was that the system would grow back in ecological value. The area was recognised in 1975 in the Environmental Protection Authority's system 11 as a significant goldfields ecosystem. The southern part of system 11 is comparatively well catered for in terms of nature conservation with some 10 nature reserves and national parks. Obviously the Nullarbor Plain world heritage area covers a small part of south eastern system 11. This area fits into the top part of system 11. As was stated by the Environmental Protection Authority a number of years ago, Wanjarri is a small island reserved for nature in a vast sea of human activity. Indeed, it was identified by the EPA as a significant area.

Some of the early work done by the EPA suggests that the lesser stick-nest rat could have been in existence in the 1990s. Sightings of the stick-nest rat and other evidence suggested that it remained in that area. Indeed, there are drawings of the stick-nest rat in that area in a publication produced in 1863 entitled *Mammals of Australia in London*. The area was fairly well renowned. The area also contains peregrine falcons, which use that breakaway country. Again, while we were out there we were lucky enough to see a number of raptors and Alexander parrots. The area that will be added is rather significant. But we must remember that the EPA also identified the area around Jones Creek as being exceedingly significant. In the past I have sat at Jones Creek with old men and heard some of their stories. It is a rather special place. Unfortunately, it forms the very centre of BHP's proposed Yakabindie mine.

It is interesting that the briefings we received from BHP suggested that the development of the Yakabindie mine may be a long way off. I am interested on one level to find out, if it is that far off, why it is necessary to do the excision now, notwithstanding the fact that an excision will have to be done at some stage if BHP is to find somewhere suitable to put its overburden and tailings. The Greens (WA) certainly do not support the driver behind this. But we are dealing with the specific issue of the land swap.

I will now talk about why the Greens have proposed an amendment that stands in my name. It reads —

Page 3, after line 8 — To insert —

- (5) The excision of the excision area is not completed until area 42831 as indicated on the deposited plan to the affected reserve has been included within the affected reserve.

We suggest that the area to be added should go through all its legal processes. Therein lies a bit of a rub, because although the current land is held under the Yakabindie pastoral lease, the moment it moves out of that lease it becomes unallocated crown land. It might become so for a millisecond, but once it is unallocated crown land, it is subject to the future act provisions. Once it is added to the Wanjarri Nature Reserve, native title will be extinguished. That moment in time will most probably mean that we will again have to go through the whole native title process for that piece of land. When we talked to BHP representatives and the government's advisors, we asked whether that means that the land might never be added. They could not tell us yes or no, because they do not know what is going to happen. Quite clearly there is a native title claim over the area—that area is claimed. The moment it becomes unallocated crown land, it is subject to the future act provisions of the Native Title Act. That is all absolutely perfectly right and proper, but it does mean that we may never get that piece of

land. If the conservation estate is to be altered in size, we suggest it mirror the size or become the expansion we are talking about. The bill before us is about excision—nothing in it refers to the land swap. The explanatory memorandum refers to it and the minister's statements have referred to it. However, there is nothing in the provisions of the bill that deal with the land swap. The bill states that the —

excision area means the area of about 758 hectares identified as the Excision Area on Deposited Plan 72976 ...

But that is the last reference to a deposited plan. It should refer to the area to be added being reflected in the deposited plan, but it does not deal with that. By moving the amendment the Greens are saying that we do not have a problem with the land swap—let it occur, absolutely—but let us have that provision in the legislation so that the land swap occurs and then there will be some imperative to getting the land swap moved forward in an erudite fashion. That is the nature of the amendment. We hope to have the support of the opposition and the government for what we think is a genuine attempt to fix that problem in the legislation. I do not doubt the intent of the department, the Minister for Lands or BHP; but the problem exists and we must try to address it.

The money to be paid by BHP is interesting, particularly the \$2 million that will be paid once Nickel West receives final internal approval to commence the nickel project, or by June 2017. I want to question the minister about some of that fiscal exchange and what it will be for when we reach the committee stage.

In essence, the land swap is a good deal. I believe the area should be identified by the Minister for Heritage as a protected area. In a simple sweep over a couple of days we found an immense amount of cultural material. We also think that the Department of Environment and Conservation should get out there and have a good look around to see whether there are any stick-nest rats in existence, because some of the nests looked pretty new. They were in caves, so one never knows. The caves were incredible; some were really deep, others were extensive. There was bat refuse everywhere. In some of the caves fireplaces still exist. Because of the highly acidic nature of bats' urine, it was creating an environment in which no wood borers were coming in, so fireplaces still existed. It was a treasure-trove for somebody who likes heritage and archaeology.

On the strength of that, that will be our position, and as we move into committee I will most probably have a number of other questions.

HON WENDY DUNCAN (Mining and Pastoral — Parliamentary Secretary) [3.00 pm] — in reply: I thank the honourable members opposite, Hon Sally Talbot and Hon Robin Chapple, for their contributions on the Reserves (Wanjarri Nature Reserve) Bill 2011 and their indications that they will support it. I will take a bit of time now to try to cover some of the matters raised. Firstly, I agree with Hon Robin Chapple that the beauty of that breakaway country is very special indeed. It certainly is a great place to go to renew one's spirit and appreciate this magnificent state that we have. I think that is why this proposal is one that we should support. For the 758 hectares that is proposed to be excised from the Wanjarri Nature Reserve, we are proposing to have 8 431 hectares of land with very important conservation values included in the reserve.

The Wanjarri Nature Reserve is a class A reserve of 53 000 hectares. The excision area is only 1.4 per cent of that area. Of course, the proposal, should this bill be passed today, is that the excision area will then be reserved for the purpose of mining and move into the care and management of the Minister for Mines and Petroleum in his capacity as a corporation sole established by section 10(2) of the Mining Act. Under this agreement, the Minister for Lands has 20 years to require Yakabindie Nickel to surrender the inclusion area from the Yakabindie pastoral lease for inclusion in the Wanjarri Nature Reserve. Until he does so, Yakabindie Nickel will manage the inclusion area at its own cost to ensure its conservation values are not degraded. Hon Robin Chapple noted that the area is already fenced and has signage on it, and he said that he thought that the Department of Environment and Conservation had done a really good job when it did that. I suspect that it was actually BHP Billiton that did the fencing.

Hon Robin Chapple: It was certainly a CALM sign.

Hon WENDY DUNCAN: Yes. The Department of Conservation and Land Management may well have put up the sign, but I suspect BHP has borne the cost. Also, I am advised that BHP is already undertaking the management of feral animals within that enclosed area. Therefore, any concern that the area will not become part of the reserve or be treated as a reserve should be allayed by those actions on behalf of BHP Nickel West that we can see already.

There are implications under the future act provisions of the commonwealth Native Title Act 1993 in relation to the proposed land tenure actions for the inclusion area. These have been considered by the relevant agencies and are reflected in the land swap agreement. Under the agreement, Nickel West will pay \$500 000 after this bill is passed and has received royal assent, and a further \$2 million by the earlier of the final investment decision for the project or 30 June 2017. Hon Robin Chapple in his remarks queried how those funds will be used. The

money will be paid into the consolidated account, but it is intended that it will be used for compliance with the Native Title Act processes, which may include negotiating an Indigenous land use agreement before the inclusion area can be added to the Wanjarri Nature Reserve, and also to cover any other costs associated with the addition of the inclusion area in the nature reserve. It should be noted that any mining proposal in respect of the project is still subject to the due processes of the Mining Act and the Environmental Protection Act. Therefore, we believe that the package is, on balance, of benefit to the state, given the significant conservation values of the inclusion area and the economic and social benefits that will accrue from the project.

Hon Sally Talbot raised the issue of the conservation values and the net benefit, I guess, that can be attributed to this land swap agreement. I inform the house that more than 3 000 hectares of the Bullimore land system, which is the habitat for the brush-tailed mulgara, and 4 000 hectares of the Sherwood land system, which supports 12 priority flora and undescribed flora species, will come into the conservation estate. The breakaway chenopod plains and mixed chenopod shrub-land habitat units will also come in. There will be increased representation of nine priority flora species and the populations of three unspecified flora species, two of which have not previously been recorded in the WNR. The land swap results in some losses in the overall scheme of things, but if we look at the table that identifies this by the detailed land system, we can see the losses as a percentage of the Murchison subregion. The Bevon land system incurs a loss of 0.04 per cent, the Jundee land system incurs a loss of 0.02 per cent, the Nubev land system incurs a loss of 0.02 per cent, and the Tiger land system incurs a loss of 0.37 per cent. In that way of measuring land systems, the rest of the land systems —

Hon Sally Talbot: Are you able to table that?

Hon WENDY DUNCAN: Yes, I could. I seek leave to table this table for the information of members present.

Leave granted. [See paper 4385.]

Hon WENDY DUNCAN: Overall, the outcome for the conservation estate is a good one.

A copy of the agreement has been provided to the opposition parties. Hon Robin Chapple asked a question about the reason for the urgency of this bill, given that the development of the Yakabindie mine may be some time off and given that nickel prices are at a bit of a low point at the moment. By definition, there are quite significant fluctuations in the price of nickel, so we really need to have this excision in place to be able to take advantage of the inevitable improvement in price that will come. Not only that, BHP Billiton cannot make its final investment decision until this excision has occurred, because its project is not feasible without this parcel of land to enable it to lay down its waste and undertake other activities.

We have been advised by BHP that this project remains an important future project for Nickel West as it provides a 20-year ore supply for operations at Nickel West Mt Keith. In spite of its strategic importance, Nickel West would need to defer studies on the NDS1 project until the current unfavourable economic conditions improve and the Reserves (Wanjarri Nature Reserve) Bill 2011 has been passed.

I also thank Hon Robin Chapple for his queries during the briefing period regarding the survey markers on the ground, because following the investigation of the questions the member asked, an error was identified in deposited plan 72583, which had been tabled in Parliament in support of the bill. The diagrammatical representation of the excision area actually did not correspond to the total area of 758 hectares that had been identified in the legend of the plan. That error was corrected in the other place, and a new agreement was subsequently drawn up to reflect that change and the changed number of the deposited plan, which is now 72976.

Hon Robin Chapple: If you have changed the deposited plan, and I'm referring to the deposited plan in the explanatory memorandum in my amendment, I assume I might have to amend that amendment?

Hon WENDY DUNCAN: Yes, I would say so, Hon Robin Chapple, because the bill came to this house with the number amended.

Hon Robin Chapple: Okay; fine.

Hon WENDY DUNCAN: So perhaps that is something that Hon Robin Chapple might need to have a look at.

Hon Sally Talbot: I do not think it affects Hon Robin Chapple's amendment.

The DEPUTY PRESIDENT (Hon Jon Ford): Order, members. It seems to me that we are slipping into a third reading debate. It is very hard for me to follow, and it is certainly hard for Hansard.

Hon WENDY DUNCAN: Thank you, Mr Deputy President; I will take your advice.

I advise the house that just before we came in today, the new agreement was signed by BHP, the representatives of the Department of Environment and Conservation, and the Minister for Mines and Petroleum. I am not sure whether the Minister for Lands has quite got there yet, but he certainly has every intention of doing so.

Central Desert Native Title Services represents the dual native title claimants for the inclusion area, and it has written seeking consultation on the bill and the inclusion area as it could impact on its clients' right. As Hon Robin Chapple has noted, this bill does not deal with the inclusion area, and the inclusion area cannot be incorporated into the Wanjarri Nature Reserve until the native title process has been followed; the funds being provided under the agreement will allow that process to flow. We need to note that the native title claim was not confirmed until January this year, so claims that there has not been consultation may be difficult to substantiate. But I certainly take the point of Hon Sally Talbot and Hon Robin Chapple that we need to consult fully with the native title people there. I have a good relationship with Kado Muir, and we have been advised by the Department of Environment and Conservation that it has not discussed the addition of the Sir Samuel block with the dual claimants. When DEC was discussing this proposal in June 2011, the dual claim had not been registered with the National Native Title Tribunal; also, it was DEC's understanding that BHP would consult with Aboriginal groups about the excision and addition. The claim is now registered with the National Native Title Tribunal and Mr Ian Keeley of DEC, who has a very good relationship with Kado Muir and is a man who is highly respected in that area, and Central Desert Native Title Services will be discussing the addition of the Sir Samuel block with the dual claimants after the reserves bill has been proclaimed. Mr Keeley also advised that he has spoken to Mr Kado Muir and others about the original excision and the addition proposal as outlined in the Wanjarri Nature Reserve management plan.

We have also received advice from BHP Billiton that Nickel West has advised the dual claim group, its legal representatives—namely, Central Desert Native Title Services—and Mr Kado Muir that it will liaise closely with the traditional owners regarding the treatment of heritage sites, to ensure that there is reasonable, minimum impact on sites in the project disturbance area. The company will engage with the claim group for a long-term land access agreement. That is the consultation that has happened to this point, given that the native title claimants' claim was lodged in January.

I will refer to a couple of other points. I suppose the most important one, of course, is the proposed amendment by Hon Robin Chapple, which is that —

The excision of the excision area is not completed until area 42831 as indicated on the deposited plan to the affected reserve has been included within the affected reserve.

The effect of that amendment would be that the excision would not occur until the inclusion land is added into the Wanjarri Nature Reserve. Given the native title requirements and the negotiation process, particularly if we want to do it properly and give due consideration to many of the issues Hon Robin Chapple raised, that would not be concluded until some years into the future. If that amendment is passed, Nickel West would not have the certainty it requires to commit to the project. I would like honourable members to consider that when we debate the amendment during Committee of the Whole.

I will also respond to Hon Robin Chapple in relation to Dingo Pool and some of the other important matters in the Aboriginal archaeological sites in the reserve. I have been told that the bottom fence line on the reserve is not straight, because there had already been some endeavour to include it in Aboriginal heritage sites. I would say that in the negotiation process for the inclusion of that reserve and the native title agreement there may well be some flexibility in the boundaries. I think that could be brought into that negotiation.

As I mentioned before on the issue of sandalwood, the application to use that excised area for that purpose will go through the normal approvals process. DEC will have the right to ensure that that sandalwood is properly managed and not wasted. Hopefully, that answers the member's query on that front.

I think I have probably covered most of the matters raised in the second reading debate, and perhaps we could go into committee. I think we had that indication from the speakers.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Jon Ford) in the chair; Hon Wendy Duncan (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon SALLY TALBOT: I will make some comments on the short title, and I am sure that you, Mr Deputy Chair, will pull me up and tell me that I should not be saying this now if that is necessary. We are looking at a three-clause bill, so I do not think it will be too confusing.

As both Hon Robin Chapple and Hon Wendy Duncan have pointed out, the land swap is not dealt with in the bill; the bill deals only with the excision of the 700-odd hectares. First of all, I will ask a question about the time

frame. If we are going to debate this issue involving a land swap, we have to include the agreement, because the agreement contains the provisions of the land swap. At page 8 of the agreement, it refers to the inclusion area and a 20-year time frame. Can the parliamentary secretary make some comments about why it is 20 years, not 10 years or 40 years? How was that figure arrived at?

I have another question that I think comes under the short title provisions of the bill. A correction has been made to an error that was made by, I understand, Landgate when it submitted the original numbers of the plans. Can I be absolutely clear about what documentation has changed as a result of the correction of that error?

Hon WENDY DUNCAN: I thank Hon Sally Talbot for the questions. The 20-year time frame was decided upon to allow plenty of time for native title negotiations. That is the maximum time frame, but the agreement can happen any time before then, as long as all parties are agreeable. The fact that we have until June 2017 to make the payment of the second tranche of funds will be an incentive to have the matters concluded sooner rather than later.

In response to the member's second question about the documentation that has changed, the deposited plan has been changed; it has a new number. That was amended in the bill in the other house. It is attached as a schedule to the agreement, so the agreement has subsequently been amended. As I pointed out in my response to the second reading debate, that agreement has been signed by nearly all parties; and, if it has not been signed by all parties by today, it is certainly well progressed.

Hon SALLY TALBOT: On a further point of clarification, is the only difference between the version of the agreement that was signed on 17 November 2011 and the current version the corrected plan number?

Hon WENDY DUNCAN: A variation to the agreement has been signed. The only matter that that variation dealt with was the change to the deposited plan.

Hon ROBIN CHAPPLE: While we are dealing with the short title, I want to touch on a few points. Sterilisation occurs when a mining company goes over land and ensures that there are no minerals there. We went over the area to be added over a couple of days and we did not find one drill hole. I am interested in what level of sterilisation was done and whether this area will be wanted for utilisation by the mining industry in the future. As far as we are aware, there is an indication that the area has been sterilised, but we could see no evidence of that.

Hon WENDY DUNCAN: Yes, the forensic Hon Robin Chapple is correct; there has been no drilling on the site. However, we have an assurance from BHP Billiton Ltd that the land does not support mineralisation. The Department of Mines and Petroleum has conducted sampling of the area to ensure that the area is deemed sterilised of minerals. In fact, a section 19 notice has been placed over that area for two years until that can be fully established. Certainly, BHP and the Department of Mines and Petroleum are satisfied that the geology does not support mineralisation.

Hon ROBIN CHAPPLE: Assuming that the bill passes within the next short while, under the agreement, when will the area be released from the Yakabindie pastoral lease? Will that occur immediately, or is there a projected date for that to occur? Some of that sort of information might be of use. When will the application begin to add the area to the Wanjarri Nature Reserve?

Hon WENDY DUNCAN: The excision from the pastoral lease will most likely occur at the same time as the Indigenous land use agreement being agreed upon, but really the state has the right at any time to excise the land from the pastoral lease. The member talks about including the inclusion area into the Wanjarri Nature Reserve. That is the intention, but it may well be that that reserve, in negotiation with the native title parties, may have a different type or status to suit the native title party. Therefore, that will be part of the negotiation, but it will be at the time of the reaching of agreement or a decision of the minister.

Hon ROBIN CHAPPLE: I am really trying to get to the time frame. The parliamentary secretary stated that it would be at that time of the signing of the ILUA; is there any projected idea of when that may occur? Are we talking about a year, 10 years, six months, a week or whatever?

Hon WENDY DUNCAN: There are quite a few players in this process and I suppose the most important ones are the negotiators in the native title agreement. Also, of course, the second tranche of funding, the \$2 million, will go into that negotiation agreement at the time that BHP Nickel West decides to proceed with the project or June 2017, whichever occurs the soonest. Therefore, that is another variable in the agreement. If BHP Nickel West decides to proceed sooner, the \$2 million comes across sooner and that may well advance the conclusion of the agreement and the inclusion of that land in the reserve.

Hon ROBIN CHAPPLE: I think we are a little vague at the moment and I understand the reasons for the vagaries, but that also gives me the same concern that may or may not —

Hon Sally Talbot: Vagueness, not vagaries!

Hon Wendy Duncan: Don't accuse me of vagary!

Hon ROBIN CHAPPLE: When we come to the amounts to be paid, it has been identified that both the \$2 million the parliamentary secretary has talked about and the original, I think, \$500 000, will be for the purposes of assisting the native title agreements. The parliamentary secretary also said that the money was also going to general revenue. With that money, how restrictive or articulated is it to a particular process? Could it end up in general revenue and just sit there?

Hon WENDY DUNCAN: Yes, the funds are going into consolidated funds, which is, I guess, where they will be held until the application is made to the Economic and Expenditure Reform Committee to release them for the purposes of the negotiation and the inclusion of that land into the reserve. I would say that the intention is clear both from the minister's statements in the other place and my comments in this chamber that that is what the funds will be used for.

Hon SALLY TALBOT: I am looking at the precise place in the agreement where this is covered. I think we are talking about 6.3. It states the following —

... The CALM Executive Body shall use the moneys paid under clause 6.1 for any, some or all of the following purposes:

- (i) compliance with the future act provisions of the NTA as they relate to the Inclusion Area ...; and
- (ii) covering any other costs associated with the addition of the Inclusion Area to the Wanjarri Nature Reserve.

There, we are talking about the purposes for which the money can be used, not the money itself. I put to the parliamentary secretary that there is a very good reason for some degree of nervousness on this side of the house about money that is allocated to the Department of Environment and Conservation's consolidated revenue. We have seen what has happened with the waste levy: only a fraction of the money that was originally supposed to go to the Waste Authority now ends up with the Waste Authority. It makes me very apprehensive when I read that DEC's consolidated revenue bucket will have an extra \$2.5 million allocated to it and under this agreement I can only see a provision for what the money should be used for, not any stipulation that all of the \$2.5 million should be spent on those purposes. What if only half that money is expended? Where does the rest of it go?

Hon WENDY DUNCAN: The money is actually not going to DEC; it is going to consolidated revenue, therefore Hon Sally Talbot's concerns and reference to the waste levy is probably not relevant at this point. DEC will need to apply to the government of the day as the expenditure is required.

Hon SALLY TALBOT: I thank the parliamentary secretary for that clarification, but I think my basic question has still not been answered. What will be the result if only \$1.5 million is required for those purposes that I have just read out? Does the rest of the \$2.5 million stay in consolidated revenue?

Hon WENDY DUNCAN: The funds have been directed into consolidated revenue for a specific purpose that is identified in this agreement. If there is an underspend, as the member suggests, it would be for DEC, the native title holders or the people with interests in the reserve to negotiate how the balance would be expanded. There are examples in other areas in which, if the funding allocated to a particular project is under-expended, there is negotiation about what happens to the rest.

Hon SALLY TALBOT: Does that mean that there will be accounts produced on a regular basis to show how much of the \$2.5 million has been expended? Otherwise I am not sure at all how the negotiators of the native title agreements, presumably the people whose names are on the claim, are going to have a sense from month to month about how much of the \$2.5 million has been spent and what it has been spent on. I have already referred to clause 6.3(b) of the agreement, but subparagraph (ii) states —

covering any other costs associated with the addition of the Inclusion Area to the Wanjarri Nature Reserve.

Will regular accounts be produced? Will this be subject to scrutiny in estimates? How do we get this information on the public record about how that \$2.5 million tracks through the system?

Hon WENDY DUNCAN: Yes, it would be through the normal accounting systems of government and, yes, the member is right: there is the opportunity to also ask those questions in estimates. I do not think it would be accounted for any differently than other project-specific funds.

Hon SALLY TALBOT: If I could ask one final question—I am trying to spare Hon Robin Chapple the pain of leaping to his feet—I will sit down after this one, for a bit anyway. Can the parliamentary secretary tell me how

the \$2.5 million was arrived at? She has referred to other instances where this tracking process has worked well. How did we get to \$2.5 million?

Hon WENDY DUNCAN: There really is not a lot of information out there to advise how much these negotiations cost. The amount is usually held in confidence. The amount arrived at here used information at the disposal of the Department of Environment and Conservation, and also drew on the experience that BHP Billiton can bring to the table about what is deemed a reasonable amount to conduct a negotiation of this sort and reach the conclusion that we are all wanting to reach.

Hon ROBIN CHAPPLE: In answer to Hon Sally Talbot, the parliamentary secretary said that if the money was not expended and there was a surplus of funds at some stage in the future, the native title claimants might have potential to claim that or acquire it. Can the parliamentary secretary either restate that or clarify what she meant by that?

Hon WENDY DUNCAN: I thank Hon Robin Chapple for the opportunity to clarify that. What I really meant was there may be matters in the native title negotiation that need resolving as they get towards the end of the process, but the money will always be held by government and managed by DEC.

Hon ROBIN CHAPPLE: Given that the area we are talking about is relatively small and it is my understanding that the claimants are more or less happy with what is going on, is not \$2.5 million a significant amount, given what might go through very, very quickly? Again, following on from Hon Sally Talbot, what happens if that money is not all consumed? Does it go to DEC? Does it go to the native title claimants? Does it go to the Department of Indigenous Affairs, which might want a protected area? I am trying to get an idea of whether it would just disappear into the bucket or whether it will actually be defined in the amending bill how it is to be used.

Hon WENDY DUNCAN: The object of the exercise is to conclude the negotiations to create the reserve inclusion area. Should funds be left over, it would be up to the government of the day and the Department of Environment and Conservation to determine how they are used.

Hon ROBIN CHAPPLE: So, it is a government decision and potentially DEC's decision. Is there no involvement with the traditional owners or the native title claimants regarding what may or may not be resolved in that area?

Hon WENDY DUNCAN: We really are trying to gaze into a crystal ball here. I do not think I can give the chamber a response that will resolve this issue. The money will remain with the government and the Department of Environment and Conservation. If there are surplus funds—there may well be—the government of the day and the parties around the table may decide there is an opportunity to undertake or entertain some of the matters the honourable member suggests. However, that is in the future and I cannot give that commitment. Clauses within the agreement might be agreed to that deal with such matters.

Hon ROBIN CHAPPLE: If DEC ends up with \$500 000 or \$1 million that has not been expended, is there a requirement that the money must be expended on the Wanjarri Nature Reserve, or can it go to DEC's general administrative procedures?

Hon WENDY DUNCAN: One thing we know for sure, Hon Robin Chapple, is that there is no obligation to return the money to Nickel West, so we can discount that possibility. I cannot confirm what would happen in those circumstances. That would be up to the minister at the time, the Department of Environment and Conservation and the parties to the negotiation.

Hon SALLY TALBOT: I think there is a degree of confusion arising here. I asked the parliamentary secretary a question about the accountability of the expenditure of that money through the estimates process, or whatever process is open to us. My question was: how will the native title claimants know the rate of expenditure and what is left over? I understood the parliamentary secretary to say that they would have some say in claiming that money. That is the first point I put to the parliamentary secretary. The second point is that the parliamentary secretary explained to me that the money will not go into DEC's consolidated revenue, but that it will go into Treasury's consolidated revenue. Why then does DEC have a say about how that money is spent?

Hon WENDY DUNCAN: The reason that DEC is the party involved is that DEC requires the land to go into the nature reserve. The department is the respondent in the native title negotiation. It will be undertaking the negotiations. Can the member just remind me of the other half of her question?

Hon Sally Talbot: What role do the traditional owner claimants have in determining how the money is spent? I thought you'd said earlier that they would have a role.

Hon WENDY DUNCAN: Yes, they certainly will. They have a role in the fact that they were at the table in the negotiations, and the negotiated agreement will not only use that money, but also determine whether the whole

amount is expended on that, in negotiation with the Department of Environment and Conservation and the government.

Hon SALLY TALBOT: On a point of clarification, when the parliamentary secretary talks about “DEC”, does she mean the Department of Environment and Conservation executive body? After she has answered that, can she explain to the house how the DEC executive body is constituted? It does not actually appear in the definitions of the agreement.

Hon WENDY DUNCAN: Hon Sally Talbot is correct; it is the DEC executive body, and that is a body corporate under the Conservation and Land Management Act, so it has the ability to negotiate in that —

Hon Sally Talbot: Under the Environmental Protection Act or the Land Administration Act?

Hon WENDY DUNCAN: Under the Conservation and Land Management Act.

Hon ROBIN CHAPPLE: We have mentioned claimants, and Hon Sally Talbot has identified the claimants more than the parliamentary secretary has. Has the Department of Environment and Conservation and/or BHP Billiton had agreement from the claimants that the area should be included in the Wanjarri Nature Reserve? What level of negotiation has gone on with the claimants in respect of the Department of Environment and Conservation and BHP?

Hon WENDY DUNCAN: No, there have been no negotiations on the inclusion area going into reserve because this bill needs to pass before we have the parameters to commence those negotiations. That will be the first step in progressing towards the ability to actually undertake this negotiation.

Hon ROBIN CHAPPLE: I note that the Wanjarri Nature Reserve management plan was from 1996 to 2006. Is there to be a new Wanjarri Nature Reserve management plan that the Wanjarri Nature Reserve will fall under? Given that we have recently passed amendments to the CALM act allowing for native title parties to be involved in the management of nature reserves, is there to be a new management plan, and will it be inclusive of the native title parties?

Hon WENDY DUNCAN: At this stage, there has been no decision to update the management plan. That is something that may well happen as we go forward with the negotiations for the inclusion, if that is actually seen to be something that is needed.

Hon ROBIN CHAPPLE: The next part of that question is: as a certain part of the area to be added to the Wanjarri Nature Reserve is now being negotiated and structured with the native title claimants, will the native title claimants, under the CALM amendments for joint management, be included in the management process of either the land that is to be added or the entire Wanjarri Nature Reserve?

Hon WENDY DUNCAN: The balance of the Wanjarri Nature Reserve is a DEC nature reserve, so the terms that the member is talking about would be part of the native title negotiations for the inclusion area, and how they relate to each other would be also part of those negotiations.

Hon ROBIN CHAPPLE: In relation to both the area to be excised and the area to be added, have site clearances been done by the relative native title parties in respect of the area to be added to the BHP lease, which is coming out of Wanjarri, and the area to be added? If the parliamentary secretary has any advice on that, could she advise me when they occurred?

Hon WENDY DUNCAN: Those clearances, particularly for the excised area, will be part of the normal approval processes to commence the use of that land for the purposes that BHP Billiton–Nickel West Pty Ltd wishes to use it. It still needs to go through those processes. In respect of the inclusion area, I would imagine that that would be part of the negotiation and assessment that is about to take place.

The DEPUTY CHAIR (Hon Jon Ford): Before I give the call to Hon Sally Talbot, given the discomfort that Hon Robin Chapple seems to be feeling from getting up and down in his chair, I am quite happy to allow some leniency; he just has to put his hand up!

Hon Robin Chapple: Thank you, I appreciate it!

Hon SALLY TALBOT: I have a few more areas of questions. If I may just return briefly to the subject of the error that was made in the Landgate information, Hon Robin Chapple was obviously in much better condition than he is now when he went on this foraging expedition! I think the parliamentary secretary referred to him as “forensic”; that is only one of many words I think could be applied to him! It seems that we discovered this error only because Hon Robin Chapple was out there and fell over something. I know that this is a hypothetical question, and the parliamentary secretary is quite at liberty to say that it is a hypothetical question in her answer, but this is a very serious mistake: how would we have discovered the error? At what point in the system would we have discovered that we were actually looking at the wrong plan? Would we then have had to come back to

Parliament and submit another bill, if this had not been discovered at the moment when Hon Robin Chapple fell over a stake or whatever it was?

Hon WENDY DUNCAN: It is a hypothetical question!

It is unfortunate that this error has happened; it is fortunate that Hon Robin Chapple assisted the officers in actually going back and checking. I do not think Hon Robin Chapple actually found the error itself, but in the process of going back to check a question he had raised, the officers reviewed the plan. As to when and how this would have been rectified at any future date, that is a hypothetical question, but with modern GPS and so on, I imagine that it would have been identified.

Hon SALLY TALBOT: I thank the parliamentary secretary. To a degree, BHP obviously regards settling this matter as something of a pressing concern; I would have thought that it was less than impressed with the failure of the government's record-keeping or information retrieval systems, which I think are a cause for concern. Although no doubt the minister will have already rapped the appropriate knuckles and put in place the appropriate mechanisms, it would be a shame if, in six months, we were back here discussing the same bill because of that kind of technical error.

Could the parliamentary secretary clarify the role the Minister for Environment played in bringing the bill to this place, in light of the parliamentary secretary's answers about the control of money and of the process that we are about to embark on ending in either 10 years or in 2017 with a final payment? Section 45(2) of the Land Administration Act states —

... the consent of the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor,

Will the parliamentary secretary clarify for the house the position of the Minister for Environment?

Hon WENDY DUNCAN: The honourable member refers to section 45 of the act, which relates to administrative matters whereby more minor matters can be undertaken without reference to the minister. Because we are excising land from a class A reserve, there has been full negotiation with the Minister for Environment and the Minister for Mines and Petroleum. The bill has also been to cabinet and therefore all ministers have been involved in this process.

Hon SALLY TALBOT: I will add to the question and ask the parliamentary secretary to clarify the role of the Conservation Commission of Western Australia as an independent body with the majority say in the care and control of the conservation estate.

Hon WENDY DUNCAN: The Conservation Commission has been involved and has considered it. In its meeting of 16 May 2011, the commission noted its endorsement for BHP Nickel West's proposal to excise this section from the Wanjarri Nature Reserve.

Hon ROBIN CHAPPLE: I seek the Chair's advice. I want to talk to a matter in a clause. Are we dealing with everything during the short title debate or —

The DEPUTY CHAIR (Hon Jon Ford): The short title debate is wide ranging.

Hon ROBIN CHAPPLE: Thank you. I refer to clause 3(3), which states —

Immediately after the excision area is excised from the affected reserve —

(a) the area ceases to be classified as a class A reserve;

I assume that it then becomes unallocated crown land. Is it subject to native title or is that area excluded from native title by the mere fact that it was in a nature reserve?

Hon WENDY DUNCAN: Native title has been extinguished in the process of the class A reserve being created. The area ceases to be an class A reserve and immediately becomes crown reserve for the purpose of mining.

The DEPUTY CHAIR: If we have dealt with clause 1, I will put the question and we can move to clauses 2 and 3.

Hon SALLY TALBOT: I have a couple more questions about the inclusion area that cannot be easily debated in clauses 2 or 3.

We have spent some time discussing the implications of a bill that is not about a land swap but the excision of land. We have talked quite a lot about the need for certainty for the traditional owners and the claimants on the native title claim, and the degree of certainty that other land will be included, which covers the question about Indigenous interests in the area. I want now to ask, from an environmental perspective, about the area to be included. I made the point in my contribution to the second reading debate that I understood that BHP acquired the lease with a view to maintaining it in such a state that it would eventually be suitable for a land swap. I have

read all the details about the conservation value of the 8 500 hectares going into the Wanjarri Reserve. However, I am not clear about the certainty the Western Australian community and the traditional owners can have about the condition of that land down the track—be it 2017 or 10 years from now—and how that land will be cared for in the interim. To articulate this concern, I refer to paragraph 5.2(a) of the agreement, which I think the parliamentary secretary quoted in her second reading response. It states —

Unless and until the Inclusion Area is surrendered in accordance with clause 5.1, Yakabindie Nickel shall, to the extent that to do so is not inconsistent with its pastoral lease obligations under the LA Act and the Pastoral Lease, manage the Inclusion Area at its own cost and in a manner not inconsistent with the intended addition of the Inclusion Area to the Wanjarri Nature Reserve to ensure that the conservation values of the Inclusion Area are not degraded from the current condition.

I have no criticisms about BHP's practices to this point because clearly it has done over and above the right thing to keep this land in a good environmental condition. However, what assurances can the parliamentary secretary give that that situation will prevail in the future? I make the point, without labouring it, that if we were to ask the people of Ravensthorpe whether BHP's intentions were always honoured into the future, they may give a slightly different answer than the one we would hope to get in the case of Wanjarri. Has the government obtained any assurances? Can the government reassure the Western Australian community?

Hon WENDY DUNCAN: The people of Ravensthorpe did not have a written agreement with BHP Billiton. This is an agreement that has been signed. That is the assurance.

Hon SALLY TALBOT: Anybody from DEC will tell the parliamentary secretary that management of a class A nature reserve is not easy. I would suggest that if it were easy, we would have a lot more class A reserves! I often make the point in this place that it is great to have hundreds of identified Bush Forever sites, but it is not good that most of them do not have a management plan. Keeping up the conservation values on a pastoral lease is an intense business. I ask again: what assurance do we have that BHP will continue this arrangement? I am specifically asking what penalties will be incurred under the agreement were that not the case.

Hon WENDY DUNCAN: I reiterate that an agreement is in place. The other thing is that once the bill is passed, there will be a memorial on the title of the pastoral lease to ensure that those conditions are complied with. At any time the government can resume that area if it is not being managed in the way we would like it to be managed.

Hon SALLY TALBOT: To be absolutely clear, is the parliamentary secretary saying that it will be the government's responsibility to monitor the ongoing management of the Yakabindie pastoral lease to ensure that BHP complies with the terms of the agreement? I will repeat the question I asked earlier: what penalties will be incurred if BHP does not maintain the pastoral lease in line with section 5.2(a) of the agreement?

Hon WENDY DUNCAN: The area can be resumed by the minister. I imagine there will be a penalty to the reputation of the company if it does not comply with the legal agreement. I have just been advised that there is the option to sue for damages if the land is not managed the way it needs to be.

Hon SALLY TALBOT: The state government could sue BHP for breach of the pastoral lease conditions.

Hon WENDY DUNCAN: The option is for the government to sue for breach of the signed agreement.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Reserve 30897 amended —

Hon ROBIN CHAPPLE: I move —

Page 2, line 19 — To delete “The” and insert —

Subject to subsection (5), the

Page 3, after line 8 — To insert —

(5) The excision of the excision area is not completed until area 42831 as indicated on the deposited plan to the affected reserve has been included within the affected reserve.

It is quite clear from the discussions we have had with the minister and from the debate so far in this chamber that BHP is not in a particular hurry for this. It has indicated in meetings that I have had with it that the price of nickel at the moment means that it might be a number of years before this comes to fruition. I understand the notion of the need for BHP to get surety to invest. But I think the intent of the chamber is clear. We do not have

a problem with the exchange. What we are saying is if we are going to put a new piece of land into the Wanjarri Nature Reserve, we cannot leave it to chance that that may or may not occur in the future. The proposed subclause will provide impetus to the government, the native title parties and BHP to fast-track this proposal so we end up with the addition in an early time frame.

Committee interrupted, pursuant to standing orders.

[Continued on page 1579.]

Sitting suspended from 4.15 to 4.30 pm